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Admitted Pursuant to LR IA 11-2

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Attorneys for Defendant Seth Wittner

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SETH WITTNER,

Defendant.

Case No. 17-Cr.-05-KJD-NJK

Related Case No. 18-Cv.-1085-KJD

STIPULATED PROTECTIVE ORDER

1 WHEREAS, the Court has established a deadline of January 31, 2020 for
2 Defendant Seth Wittner to file amended briefing and supporting materials under 28
3 U.S.C. § 2255 (ECF No. 43);

4 WHEREAS, Mr. Wittner anticipates that in order to adequately present his
5 section 2255 claims for the Court's consideration, it will likely become necessary for him
6 to make factual representations to the Court—through, for example, a declaration
7 and/or testimony—that may, at least arguably, implicate evidentiary privileges such as
8 his Fifth Amendment right against self-incrimination, the attorney-client privilege, and
9 the attorney work product doctrine;
10

11 WHEREAS, the Ninth Circuit has held that the waiver of such privileges in a
12 collateral proceeding “is narrow and courts must limit the use of any privileged
13 testimony to litigation of the habeas claim.” *See Lambright v. Ryan*, 698 F.3d 808,
14 822-25 (9th Cir. 2012); *Bittaker v. Woodford*, 331 F.3d 715, 720-27 (9th Cir. 2003) (*en*
15 *banc*);
16

17 WHEREAS, it furthers the fair and efficient administration of justice for the
18 Court to proactively declare Mr. Wittner's rights in this regard through the issuance of a
19 protective order. *See, e.g., Bittaker*, 331 F.3d at 721, 727-28;
20

21 The parties hereby STIPULATE AND AGREE, subject to the approval of the
22 Court, that any waiver of Mr. Wittner's Fifth Amendment rights, attorney-client
23 privilege, and/or attorney work product doctrine in connection with the instant section
24 2255 proceedings shall be narrowly construed; that the use of any such privileged
25 information shall be limited to the litigation of Mr. Wittner's section 2255 claims; that
26 such information may not be used for any other purpose, including but not limited to
27 subsequent court proceedings such as resentencing; and that the government may not
28

1 disclose formerly privileged information to any persons other than personnel assisting
2 with these section 2255 proceedings.

3 IT IS SO STIPULATED.

4 DATED: January 13, 2020

/s/ Jay A. Nelson
JAY A. NELSON
Attorney for Seth Wittner

7 DATED: January 13, 2020

/s/ Richard Anthony Lopez
RICHARD ANTHONY LOPEZ
Assistant United States Attorney

9 **CERTIFICATION**

10 By presenting the signatures set forth above, the filing attorney hereby certifies
11 that he has received authorization to present this stipulation on behalf of both parties.
12

13
14 IT IS SO ORDERED.

15 
16
17 THE HONORABLE KENT J. DAWSON
18 UNITED STATES DISTRICT JUDGE

19 DATED: 1/30/2020
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PROOF OF SERVICE

I, Jay A. Nelson, certify that I have served all parties in this matter by filing the foregoing pleading electronically, as set forth by LR IC 4-1 and LCR 49-1.

DATED: January 13, 2020

/s/ Jay A. Nelson
JAY A. NELSON